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## II. FINDINGS OF FACT

2.1 Appellant William Morrison is a Physician 3 and permanent employee for Respondent Department of Social and Health Services (DSHS) at Western State Hospital (WSH). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 17, 2000.

2.2 In his appeal, Appellant alleged that Respondent violated WAC 356-42-043 (2), (9) and (13) when the union failed to notify him of the existence of a union shop requirement, when the employer did not enforce the requirement that he become a member of the union, and when the employer did not notify him of the existence of the union shop provision prior to his hire.

2.3 WAC 356-42-043 states, in relevant part:

(2) Upon certification as a union shop representative, the employee organization shall notify all employees within the bargaining unit of the existence of the union shop requirement and the conditions of employment which arise under that requirement.

. . . .

(9) Failure of an employee to become a member of the employee organization which is the union shop representative or make payment of the union shop representation fee or the nonassociation fee within thirty calendar days following the employee's start of employment or within thirty calendar days after an employee organization has been certified as union shop representative, whichever is later, shall cause that employee to be dismissed as hereinafter provided.

. . . .

(13) The appointing authority shall notify affected employees of existing union shop provisions prior to their hire, promotion, or transfer into a bargaining unit where such provisions are in effect.

2.4 The Physician's Bargaining Unit at WSH came into existence in May 1984 by oral order of the Personnel Resources Board. The union shop provision was in effect at that time. The Washington Federation of State Employees (WFSE) was the exclusive representative for the union shop.

1 2.5 Appellant was hired into his position on September 8, 1987. He attended a new employee  
2 orientation on September 15, 1987, during which the union shop requirements in general were  
3 discussed. During the orientation, Appellant was given a copy of the Collective Bargaining  
4 Agreement (CBA) between DSHS and WFSE for the Institutions Bargaining Unit. Appellant was  
5 not provided a copy of a CBA for the Physicians Bargaining Unit.

6 2.6 The Institutions Bargaining Unit CBA was dated January 1987 and stated that physicians  
7 were excluded from the Institutions Bargaining Unit. Nonetheless, Appellant became a member of  
8 WFSE within thirty days of his hire. The WSH Medical Director later informed Appellant that  
9 union membership was optional.  
10

11 2.7 Appellant remained a member of the WFSE until 1993 when he informed WFSE by letter  
12 that he could no longer afford the \$500 per year membership dues and asked to have his name  
13 removed from the union roster. Appellant provided WSH payroll office with a copy of his letter.  
14 As a result, WSH stopped the automatic dues deduction from Appellant's paycheck. Neither WSH  
15 nor WFSE contacted Appellant about his obligation to continue to pay union dues under the union  
16 shop provision.

17 2.8 By letter dated October 19, 1999, the WFSE informed WSH that Appellant had not fully  
18 complied with the union shop requirements and asked WSH to notify Appellant of his dismissal for  
19 failure to comply with the requirements. WFSE indicated that if Appellant complied with the union  
20 shop requirement within fifteen days of the notice, the request for his dismissal would be  
21 withdrawn.  
22

23 2.9 By letter dated February 28, 2000, Appellant was notified of his dismissal, effective March  
24 31, 2000, for failing to meet union shop requirements. On March 17, 2000, Appellant filed a rule  
25 violation appeal with the Board. On March 21, 2000, Appellant signed a payroll authorization card,  
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1 which he gave to Respondent's Personnel Office, thereby fulfilling the union shop requirements. By  
2 letter dated March 30, 2000, Respondent rescinded the February 28, 2000, letter.

3 2.10 On August 17, 2000, Appellant filed an Unfair Labor Practice (ULP) charge against WFSE  
4 with the director of the Department of Personnel (DOP). DOP investigated the charge but did not  
5 issue a complaint. By letter dated November 27, 2000, DOP responded to the ULP charge and  
6 stated, in part:

7  
8 Although you have not had to pay dues/fees for years, it is not an unfair labor  
9 practice for the union to now decide to enforce the union shop provision. WSH has  
10 an obligation under the rules and law to comply with the union's request to enforce  
the union shop provisions. The enforcement action is in accordance with the  
applicable rules and not an unfair labor practice.

11 2.11 Appellant did not appeal this matter to the Washington State Personnel Resources Board.  
12

13 2.12 As of the date of the hearing on this appeal, union dues have not been deducted from  
14 Appellant's pay despite the payroll authorization card he signed on March 21, 2000.

### 15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Appellant argues that after he received the notice of his dismissal and began to look into the  
17 situation, he realized that the situation presented a basic wrong that needed to be addressed.  
18 Appellant contends that he was not told of the union shop requirement before he was hired or  
19 during orientation. Appellant asserts that he was not given the correct information up front; that  
20 neither WSH nor WFSE took action when he withdrew his membership in 1993; and that they  
21 treated the bargaining unit like an open shop. Appellant contends that based on past practice, the  
22 bargaining unit should be considered an open shop. As a remedy to his appeal, Appellant requests  
23 that DSHS give him a letter of apology, that the Board follow up on DSHS's promise of change, and  
24 that the Board order DSHS and WFSE to comply with the rules.  
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1 3.2 Respondent argues that labor relations is a confusing and complicated technical field of  
2 expertise and contends that Appellant does not understand the field. Respondent argues subsection  
3 (3) of the rule requires an action by the union; therefore Respondent cannot and did not violate  
4 WAC 356-43-043(3). Respondent argues that subsection (9) provides a cause for dismissal but  
5 asserts that because Appellant was not dismissed, this subsection does not apply and was not  
6 violated. Respondent asserts that Appellant was notified of the union shop requirement during  
7 orientation and as a result, he joined the union at that time. Therefore, Respondent contends that  
8 subsection (13) was not violated. Respondent asserts that the appeal should be denied.

#### 9 10 **IV. CONCLUSIONS OF LAW**

11 4.1 Primary jurisdiction for matters arising under Chapter 356-42 WAC governing labor  
12 relations lies with the Washington State Personnel Resources Board. However, the Personnel  
13 Appeals Board has jurisdiction over the parties hereto and the subject matter herein under the  
14 provisions of RCW 41.06.170(2) which provides any employee adversely affected by a violation of  
15 the state civil service laws or rules the right to appeal to this Board.

16 4.2 The narrow issue before the Board is whether Respondent DSHS violated WAC 358-42-043  
17 (2), (9), or (13). In an appeal of an alleged rule violation, Appellant has the burden of proof. WAC  
18 358-30-170

19 4.3 Appellant has failed to prove that Respondent violated WAC 358-42-043(2). This provision  
20 required WFSE to notify employees in the bargaining unit of the union shop requirement and  
21 conditions of employment upon certification of WFSE as a union shop representative. First, WFSE  
22 is not the Respondent in this appeal. Second, Appellant was not an employee of WSH when WFSE  
23 was certified as the union shop representative; therefore, even if this subsection of the rule was  
24 violated, Appellant was not adversely affected.  
25  
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1 4.4 Appellant has failed to prove that Respondent violated WAC 358-42-043(9). In relevant  
2 part, this subsection authorizes dismissal of an employee who fails to become a member of the  
3 employee organization which is the union shop representative or make payment of the union shop  
4 representation fee or the nonassociation fee within thirty calendar days following the employee's  
5 start of employment. This provision does not require the automatic dismissal of an employee who  
6 fails to become a member of the employee organization. Respondent's lack of action to dismiss  
7 Appellant does not violate the rule. Furthermore, Appellant joined the union within thirty calendar  
8 days of his hire, even though he subsequently withdrew from the union and stopped paying union  
9 shop or nonassociation fees. Once WFSE raised the issue of nonpayment, Respondent was required  
10 under WAC 356-42-043(12) to take action to notify Appellant, which it did.

11 4.5 Appellant has met his burden of proof that Respondent violated WAC 358-41-043(13). This  
12 subsection requires the appointing authority to notify affected employees of existing union shop  
13 provisions prior to their hire, promotion, or transfer into a bargaining unit where such provisions are  
14 in effect. Appellant asserts he was not notified prior to hire. Nothing in the record clearly  
15 establishes that Appellant was informed of the union shop provision for the Physician's Bargaining  
16 Unit prior to his hire. Respondent provided no direct evidence to overcome Appellant's assertion.  
17 Based on the record before us, it is more likely than not that the appointing authority did not notify  
18 Appellant of the union shop provisions prior to his hire.

19  
20 4.6 Appellant's appeal should be granted in part. Respondent should be ordered to notify  
21 applicants in writing, prior to their hire, of the union shop provisions where such provisions are in  
22 effect. Furthermore, Respondent should be ordered to present accurate oral and written information  
23 during new employee orientation regarding the existence of the union shop provisions where such  
24 provisions are in effect. In addition, Respondent should be ordered to maintain a written record to  
25 confirm that each new employee is provided a copy of the applicable Collective Bargaining  
26 Agreement then in effect at new employee orientation.

1 **V. ORDER**

2 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of William Morrison is granted  
3 in part and Respondent is ordered to:

- 4 • Notify applicants in writing, prior to their hire, of the union shop provisions where such  
5 provisions are in effect;
- 6 • Present accurate oral and written information during new employee orientation regarding the  
7 existence of the union shop provisions where such provisions are in effect; and
- 8 • Maintain written confirmation that each new employee is provided a copy of the applicable  
9 Collective Bargaining Agreement during new employee orientation.

10 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2001.

11 WASHINGTON STATE PERSONNEL APPEALS BOARD

12 \_\_\_\_\_  
13 Walter T. Hubbard, Chair

14 \_\_\_\_\_  
15 Gerald L. Morgen, Vice Chair

16 \_\_\_\_\_  
17 Leana D. Lamb, Member